



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32500217

Date: AUG. 22, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an economist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that while the Petitioner met the initial evidence requirement for this classification by meeting at least three of the evidentiary prongs under 8 C.F.R. § 204.5(h)(3), the record did not establish that she had the necessary sustained national or international acclaim and was one of the small percentage at the top of her field. The Director also concluded that the Petitioner had not established that she was coming to the United States to work in her area of claimed extraordinary ability. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” A petitioner can demonstrate that they meet the initial evidence requirements for this immigrant visa classification through evidence of a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about lesser awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned a Ph.D. in economics from the [redacted] in Nigeria in 2018, and has worked in the areas of health economics and development economics. At the time of filing she was a reader (associate professor) at [redacted] in Nigeria, as well as the acting head of the school’s department of economics. She states that she intends to “continue working on applying my in-depth knowledge of health economics and applied econometrics to the design and development of economic models” in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that they received a major, internationally recognized award, they must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded that the Petitioner met the requisite three criteria, but did not show that she had sustained national or international acclaim and is one of the small percentage near the top of the field of economics. On appeal, the Petitioner asserts that the Director erred in his final merits analysis. After reviewing all of the evidence in the record, we disagree with and withdraw the Director’s conclusion regarding the criterion at 8 C.F.R. § 204.5(h)(3)(viii), but nevertheless agree with his conclusion concerning her eligibility for classification as an individual of extraordinary ability.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

To meet the requirements of this criterion, a petitioner must first establish that they have served in a role that was either leading or critical for an organization or establishment, or a department or division thereof, and that the organization, establishment, department, or division has a distinguished reputation. Evidence of a leading role may include a title and matching duties, and should indicate

that the petitioner is or was a leader. Evidence supporting a critical role should show that the petitioner has contributed in a way that is of significant importance to the outcome of the organization's or establishment's activities, or those of a division or department. Second, a petitioner must show that the organization or establishment, or department or division thereof, for which the leading or critical role was performed has a distinguished reputation. Factors may include the size, longevity, media coverage, awards, and industry rankings of the organization, establishment, department, or division. *See generally 6 USCIS Policy Manual F.2(b)(1).*

The Director concluded, without analysis, that the Petitioner meets this criterion. In support of this criterion, the Petitioner submitted evidence of her appointment as acting head of the Department of Economics at [REDACTED] for a two-year period, which included a place in the school senate. She also submitted evidence of her appointment to various committees within [REDACTED] college of social and management science. A letter from one of her colleagues described her as "a pillar of the Department of Economics" who has contributed to curriculum development and the accreditation of the department's undergraduate and postgraduate programs. This evidence sufficiently establishes that her role is leading as it pertains to the economics department, but not for [REDACTED] overall.

In support of the organization's distinguished reputation, the Petitioner submitted articles announcing [REDACTED] ranking by The Times Higher Education as the highest in Nigeria in its [REDACTED] in 2022 and 2023, which the articles indicate is based upon the United Nations' Sustainable Development Goals (SDGs). According to the articles, these include measures of universities' "research on climate change, their use of energy and their preparations for dealing with the consequences of climate change." While this evidence may be sufficient to show that [REDACTED] has a distinguished reputation in these respects, it does not shed light on its overall academic reputation when compared to other universities, nor does it speak to the reputation of [REDACTED] economics department. Because the record does not demonstrate that the department for which the Petitioner performs a leading role enjoys a distinguished reputation, we disagree with and withdraw the Director's conclusion regarding this criterion.

B. Final Merits Determination

Per the above, the Petitioner has not established that she meets at least three of the evidentiary criteria, and thus does not meet the initial evidence requirements for this classification.¹ However, as the Director's decision depended upon his analysis in the final merits determination, we will review the record to determine whether the Petitioner possesses the requisite levels of expertise and recognition in her field.

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. Here, the Petitioner has not offered sufficient evidence that she meets that standard.

¹ The Petitioner does not challenge the Director's decision that she does not meet two other criteria that she claimed, relating to her membership in associations in her field requiring outstanding achievements and her original contributions of major significance to her field. We will consider the evidence submitted in support of these criteria in reviewing the final merits determination.

The Petitioner asserts on appeal that the Director did not consider her response to the RFE in his decision, pointing to a sentence appearing in both. But this cannot be the case, as the Director granted the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which pertains to an individual's performance in a leading or critical role, after considering the additional evidence submitted by the Petitioner.

In addition, the Petitioner's brief refers to the section of the USCIS Policy Manual pertaining to the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence of an individual's activity as a judge of the work of others in their field, in support of her assertion that the Director did not follow USCIS policy when conducting the final merits determination. But this assertion is misguided, as in this second step of the analysis for this immigrant visa classification, we do not consider evidence under the individual evidentiary criteria. Rather, we evaluate whether the entirety of the evidence shows that the individual has sustained national or international acclaim in their field and that they are one of the small percentage at the top of that field.

The Petitioner also challenges whether the Director reviewed the entirety of the evidence in making his determination in the final merits analysis, noting that he discussed evidence submitted in support of only three of the evidentiary criteria which she claimed to meet. However, in addition to analyzing the evidence regarding the Petitioner's activity as a judge of the work of others, her authorship of scholarly articles, and her performance in leading roles, the Director also evaluated the reference letters and citations to the Petitioner's scholarly articles. While the Director did not mention the evidence of her memberships in professional associations in his decision, the Petitioner does not articulate on appeal how this evidence demonstrates her acclaim at the national or international level or places her amongst the elite in her field.

Along with her appeal brief, the Petitioner submits copies of three non-precedent decisions concerning petitions for classification as an individual of extraordinary ability in which we remanded the matter to the Director for reconsideration of the evidence in final merits determinations, and urges us to do the same in her case. But these decisions were not published as a precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Also, in each of those cases we concluded that the Director had not considered the totality of the record and provided a thorough analysis of the evidence. As discussed above, in this case, the Director sufficiently addressed the record in his decision.

Turning to that evidence, and specifically regarding the evidence of her participation as a peer reviewer, the Petitioner asserts that her review of transcripts submitted to "top scholarly journals" is not routine as stated by the Director. The record shows that she is a member of the editorial board for two journals, one of which is published by her college at [REDACTED]. She was also invited to review manuscripts submitted to four journals, including her college journal, and completed those reviews. But there is no evidence in the record that supports her assertion that these journals are "prestigious," or that serving as a peer reviewer for these particular journals is an indicator of her standing at or near the top of her field. In addition, while we acknowledge that peer review requires a certain level of expertise, the Petitioner has not shown that either the quantity or quality of her peer review activity for these journals reflects national or international acclaim.

The Petitioner also presented evidence of her service on several thesis examination panels for masters and doctoral degree candidates at [REDACTED]. On appeal she notes that she served as chairperson for many of these panels, but all of those assignments were made during her period as Acting Head of the economics department, as evidenced by her signature on the documents. The Petitioner also does not explain the significance of serving as chairperson on these panels, or how this is indicative of national or international acclaim. We agree with the Petitioner that this activity, together with her work as a peer reviewer for the journals mentioned above, meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(iv). But she has not established that it reflects the level of expertise and recognition required for classification as an individual of extraordinary ability.

Regarding the evidence of the Petitioner's scholarly publications, she again bases her critique of the Director's decision on the relevant evidentiary criterion. Specifically, she asserts that the Director erred by focusing in his decision on the number of citations to those publications by other scholars in the Petitioner's field. But the Director correctly considered the evidence of her publications as well as the evidence of their recognition by other scholars and in the field of economics overall, as USCIS policy requires when conducting a final merits determination.

To support the citation of her work by others, the Petitioner submitted a list of 40 articles for which she was listed as an author that she asserts were published in scholarly journals. However, we note that two of those articles are listed twice, and less than half of the listed articles are verified by documentary evidence in the record. In addition, the Petitioner submitted a copy of her profile from www.scholar.google.com which lists only 20 articles, several of which do not indicate that she was an author. As we noted at the outset, it is the Petitioner's burden of proof to establish that she meets the requirements for an individual of extraordinary ability, and that burden cannot be met through unsupported assertions. Here, the record does not support her assertions as to the quantity of her published work.

In addition, as indicated in the Director's decision, the influence of her published work carries more weight than quantity when determining its recognition in the field. The Petitioner refers to the evidence of the number of citations to her published work, as indicated in her Google Scholar profile, and asserts that the Director must not have reviewed this information. But the Director referenced the evidence of the Petitioner's citations in his decision, and concluded that it was insufficient to establish her recognition or standing within her field.

Moreover, the record does not include sufficient evidence to verify the number of citations she claims, as noted above, or to provide context for the number of citations to the Petitioner's published work. Even if we were to accept the number of citations reported on her Google Scholar profile, despite the listing of numerous articles not showing her as an author and/or not verified in the record, the Petitioner has not provided documentation which demonstrates that that number is indicative of national or international recognition in the field of economics, or places her amongst the few at the top of that field.

Other documentation concerning the influence and recognition of the Petitioner's published work takes the form of reference letters from her collaborators and colleagues. For example, one of her colleagues at [REDACTED] writes that he has collaborated with her on research projects, including a study of poverty reduction across several countries and a book chapter on disaster risk reduction strategies.

He also writes that her work on a project targeting poverty alleviation and food insecurity in Nigeria has been “recognized internationally for its excellence.” While he provides further technical details about this project, the professor does not elaborate on how it has been recognized in the field of health economics.

The record also includes evidence of the Petitioner’s career in her field beyond her published work, including her position as a consultant (research fellow) in the [REDACTED] of the [REDACTED]. A letter from the director of the [REDACTED] states that in this role he solicited the Petitioner’s input on reports and policy documents pertaining to economic recovery from the COVID-19 pandemic, International Monetary Fund debt cancellation, and other economic issues concerning the member countries, including [REDACTED] flagship Economic Report on Africa. Another letter, from the economic affairs officer of [REDACTED] describes the Petitioner’s work in developing improved economic models for three African countries and improving the performance of the [REDACTED] through her work. The acknowledgments section of three reports were submitted that evidence the Petitioner’s contribution in research and data analysis, but neither the letters nor the acknowledgments indicate that she was responsible for authoring or editing these reports or played more than a supporting role in their drafting.

Additional evidence pertains to the Petitioner’s work as an educator at [REDACTED] including her administrative role as head of the economics department, a position in which she is eligible to serve for two two-year terms. In addition to her participation on several masters and doctoral thesis defense committees as previously discussed, documents show that she was appointed as a member of the accrediting committee for her college at [REDACTED] and participated in the university’s senate meetings, responsibilities which appear to stem from her role as a department head. A letter from the dean of the college confirms that as a department head, the Petitioner serves as a member of the university senate, serves in several boards and committees at the college level, and acts as a the department’s chief examiner. The writer notes that her accomplishments in this role include overseeing the graduation of more than 40 undergraduate and graduate students and advancing a proposal to create a Centre for Economic Research and Data Analysis at [REDACTED]. While we have previously acknowledged that this role is a leading one for the economic department at [REDACTED] this evidence does not show that the Petitioner’s recognition as a health economist and educator extends beyond [REDACTED] to the national or international level.

As extraordinary ability is an elite level of accomplishment whose recognition necessarily entails a judgement call, it cannot be established through meeting at least three of the evidentiary criteria alone. The final merits determination is the ultimate statutory inquiry of whether the applicant has extraordinary ability as demonstrated by sustained national or international acclaim. *Amin v. Mayorkas*, 24 F.4th 383, at 395 (2022). Here, the record shows that the Petitioner is a respected associate professor at [REDACTED] and worked in a short-term position as a research fellow at a United Nations agency, where she contributed to reports and economic models. But it does not establish that her work in either of these roles has let to sustained national or international acclaim. In addition, the Petitioner has not demonstrated that her published work has had an influence on others in the field of economics to an extent consistent with sustained acclaim, or that it has led to her recognition as one of the small percentage at the top of the field. Accordingly, we conclude that she has not established her eligibility as an individual of extraordinary ability.

C. Coming to the United States to Work in Field of Endeavor

As noted above, a petitioner seeking eligibility as an individual of extraordinary ability must seek to enter the United States to continue work in their area of extraordinary ability. To meet this requirement, a petitioner must submit “clear evidence” that they will do so, which may include letters from prospective employers, evidence of prearranged commitments, or a statement detailing their plans on how they intend to continue their work in the United States. 8 C.F.R. § 204.5(h)(5).

The Director determined, based in part on the Petitioner’s residence and employment in Nigeria, that the record did not include clear evidence of her intent to continue working in the field of health economics in the United States. Specifically, she concluded that the Petitioner’s plan was insufficient since it merely expressed her “prospective hopes of finding or creating work.” On appeal, the Petitioner asserts that her plan to create a consulting firm in the United States, through which she would offer economic models in the areas of poverty alleviation and health insurance, was sufficiently detailed. We agree, and withdraw the Director’s conclusion regarding this issue.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. Nevertheless, we have reviewed the entire record and conclude that it does not establish that the Petitioner has the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that she is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.